

SUPREME COURT.

January Term—Mr. Justice Bickerton Presiding.

FRIDAY, JAN. 18.

Trial of J. E. Robertson for Shooting Magoney—Verdict of Guilty—An Appeal Taken.

The King vs. J. E. Robertson. Assault with a deadly weapon. Deputy Attorney-General Peterson and W. A. Whiting for the Crown; V. V. Ashford, Paul Neumann and G. K. Wilder for the defendant.

The indictment was presented as follows: That John R. Robertson, a foreigner, on the 13th day of October, 1888, with force and arms in and upon one Louis Magoney willfully, feloniously and without authority or justification by law maliciously did make an assault, beating and there armed with a weapon ob-

er. Mr Ellenberg

The following jury was sworn: H. G. Crabbe, G. C. Stratemeyer, J. H. Black, J. Welsh, Robert Grieve, I. A. Burgett, E. H. Howe, Hugh Gunn, T. F. Lansing, Chas. Lucas, J. M. Dowsett and W. E. H. Deverill.

Deputy Attorney-General Peterson opened his injury briefly reviewing the facts of the case. With regard to delay in bringing up the case, Mr. Peterson said that, owing to the defendant being related to the Attorney-General, the matter had been placed in his hands. He had been absent on Hawaii several months and since his return had been very busy. He explained that there had been no intention to delay the case, if any blame in the matter he alone was responsible for it.

Dr. G. Trousseau (after a discussion between witness, Crown counsel and the Court as to remuneration being paid witness as an expert, sworn—I hold a license to practice medicine. There has been here eighteen years; I know the man Magoney; in October last I attended

us were there together, and made a thorough examination of Magoney; he was very weak from loss of blood; he was shot in the lower part of the left arm; we decided that immediate amputation was necessary; it was performed by Dr. McKibbin; the lower part of the left fore arm hung by little pieces of skin; by the size of the wound I should say it was made by shot.

Dr. Robert Jackson, 2001 21st and
practising physician and surgeon; am
regular attending physician at the
Queen's Hospital; Magoney was brought
there at 2 o'clock a. m. October 14th;
Dr. Trousseau telephoned to me about
him; we made an examination and saw
the only chance for his life was amputation;
both bones of lower part of fore
arm were shot; there was no shot there.

not in different parts of the body; there must have been two shots; Magoney was discharged from the Hospital November 10th; his recovery was rather rapid.

"J. H. Soper, sworn—I am Marshal of the Kingdom; I investigated the premises at Waialua a day or two after the shooting; saw the house and the lay of the land; saw a shotgun there, a double barreled gun, with a snap on the end; it was an old gun.

"Cross-examined—The piece of wood (produced) is the brace of a saddle-rack; I found it near the veranda of the house; it has been under lock and key ever since.

"Louis Magoney, sworn—I know J. H. Robertson; he was working for him in October last; had been there for four or five weeks; on Saturday the 13th of October I went with Mr. Robertson to Mr. Gay's for some horses; we started

about 8 o'clock in the morning; he left me in the afternoon to go to Waialua. I got the horses after some difficulty and took them home, arriving there about 10 o'clock in the afternoon; Robertson got home about half or three-quarters of an hour later; he called us all in to supper; there were John; Angus, Kealoha and myself; we all had supper; during the meal I made some remark about the description of the horses I was sent after which made Robertson mad and excited: he called me a damned son of a bitch, and getting up picked up an ax handle and made two welts at me. I showed him and he fell down, upsetting a Kettle of

blows off; a man named John got hold of me and I went out by the kitchen door and round to the room where I sleep; did not go into the room; while standing outside thinking, saw Robertson come right through the shed; he cut

gun to his shoulder and said, you son of a bitch I have got you now; he shot, but I did not exactly feel it that time; the second time he aimed right at my head; I tried to dodge the shot and closed up to him when he shot me in the arm; he said God damn you, I will kill you; I told him he might as well have killed me; John came and he laid my head on his knee when Robertson came and he told me he was going to shoot after he got some bandages and bound my arm up, using shingles; he also got a bottle of carbolic acid and poured it into the wound; it burned me considerably; while I was laid down I said you are a fine lot of men not to have been able to take the gun away from him; I was brought to town; when the first shot was fired he was about fifteen feet away; could not say exactly; at the second shot he was pretty close to

able at supper time, Robertson, being at the end; Angus sat between me and Robertson; Kealoha was between me and John; I spoke to Robertson about the description he gave me of the horses; he stood up and got an ax handle from behind the kitchen door, and made two blows at me; I warded the blows off by probably being quicker than he was; he struck me on the left arm; I shoved him over as he was making the second blow; I remained in the room about two seconds after the trouble; John grabbed me and I went out of the room; I did not say anything to Robertson; I did not say "you son of a bitch I will cut

warning or not; think it was already loaded; belt with cartridges was hanging in kitchen; carried no cartridges in my pocket; between Magoney's going out and coming back was about five minutes; did not go to the kitchen in that interval (to a juror) there were several ax handles in kitchen, not far from the dining room table; (to Mr. Whiting) do not keep any cartridges near the gun; (to the Court) door where shot was fired closes from inside.

J. F. Eckardt, sworn—I am in charge of Queen's Hospital; know Magoney, he was a hospital boy five weeks; his temper is rather fiery and excitable; he was rather refractory patient; Magoney made a remark when I was present in room when his brother and Mr. Flohr were there, that "If Robertson hadn't got that shot at me, he would have been wearing a wooden overcoat by this time;" he spoke so loud that I had

Cross-examined by Mr. Whiting—That remark was made about a week after Magoney came to hospital; he was not suffering more pain than was to be expected from nature of injuries; dress-

ing with carbolic acid does not cause irritation, that is, until suppuration begins; it began in this case about ten days after admission.

Thomas Maloney, sworn—Was an inmate of Queen's Hospital when Magoney was there; remember when Flohr and Magoney's brothers were there; conversation was so loud that I told them to go out of the hospital; I have had private conversations with Magoney; heard him reference to "wooden overcoat," do not remember other conversations of that kind.

V. V. Ashford, sworn—I went down to premises where shooting occurred; this was the first correct plan; did not measure distance from door to verandah step, it is about five or six feet; found blood on jamb of door and mark of quito

pool of blood on floor, not as if rubbed on but as if it had spurted there; don't remember whether step to veranda was high or low step; Magoney's bedroom door is perhaps thirty feet from Robertson's, but the rooms themselves are not more than fifteen feet apart; saw cartridge belt hanging where Robertson said it was; forgot whether I saw the gun or not; (to a juror) as a matter of opinion I don't think two barrels could go off at a short distance and sound like one discharge.

Cross-examined—Have in my experience fired two barrels together; never mistook two for one at short distance; my impression is that I did not examine outside of door.

Defense rests.

Mr. Neumann addressed the jury for the defense, beginning at 3:42 p. m. He claimed that the evidence showed that Magoney had brought his injury upon himself by his violence, his threats against Capt. Robertson and, so far as the latter believed, his attempt to execute those threats. There were conflicting statements as to the testimony for the defense, which made it difficult for the defendant. Among all the other witnesses for the prosecution none had supported the statement of Magoney that Capt. Robertson committed or attempted an assault upon him with an ax.

handle. Mr. Eckardt's evidence showed that Magonez was a man of violent temper, and that it had been his intention, according to his own words, to do serious injury to the Captain and perhaps take his life. Reasonable ground was established for believing that Robertson was in actual bodily fear, and it did not require that a man should be a coward to defend himself as Robertson had. The defense had nothing to do with the witnesses for the prosecution, but not one of these would testify that

more than one shot had been fired, except Dr. McKibbin who said that from the nature of the wound there must have been two shots fired. There was no surgeon whose diagnosis or opinion on a pathological question he would more readily accept than that of Dr. McKibbin, but in the gunning matter he considered the theory of two shots was irreconcilable with the evidence of eyewitnesses. There were two gunning men on the jury who perhaps could explain

low shots from a single discharge could have penetrated Magoney's foot, his shoulder and his, cheek at that short range. Perhaps Magoney was in the act of stooping to mount the veranda and being a small man the focus was thus reduced so as to admit of the bullet hitting his foot. Our counsel, upon the testimony to detail, to show that Magoney brought the damage upon himself by his criminal conduct, and that Robertson was fully justified in shooting him to protect himself against what he feared was to be a dangerous and serious assault. The contradictions of and inconsistencies in Magoney's own evidence were such as should take it altogether out of their consideration. He testified that he never set foot upon the veranda, that he never stepped out, or walked out, as he said himself, and was clearly proved that he was in the act of stepping upon the veranda when shot. That was why he (counsel) had asked about the blood: it was shown to be on the veranda and on the door jambs, and was undoubtedly Magoney's. After being warned off the premises on account of his violent conduct, it would have served him right if he had lost his

Mr. Whiting addressed the jury for the Crown, beginning at 4.20 o'clock. He briefly explained his position in the case, having been asked only the previous evening to assist the Government. The evidence of Magoney and the other employees of Robertson at that time, was conclusive to show that Magoney was the "strong" man in the whole company. All the other employees were "weak" so much so that he does not seem to have known what he was doing. It seemed very strange that all the cursing was done by Magoney, as most men would find it hard to be calm after receiving such a burn as Robertson. There was no evidence that Robertson had been told that injured Magoney. The whole case converged in the question whether Robertson was justified in the shooting, and the Court would instruct them as to how far a man could go under the circum-

Judge Bickerton then charged the jury at 4-35. There was now no doubt as to the defendant's having fired the shot that wounded Magoney. It was for them to decide whether or not the one shot had been fired; he had no theory to offer them. He charged them that the affair in the kitchen did not warrant defendant in taking the gun that trouble

Mr. Neumann noted an exception to the verdict and gave notice of motion for a new trial.

Mr. Justice McCully presides in the afternoon, to hear continuation of the following divorce case, partly tried by him at last term.

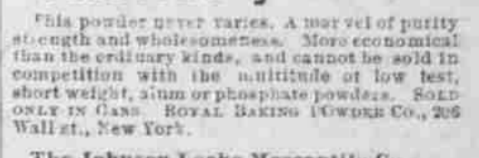
A. M. Kahananui, w., vs. B. H. Kahananui, k. Petition for divorce. C. Creighton for plaintiff; A. Rosa for defendant. Unfinished when the Court adjourned at 4 p. m.

Before Mr. Justice McCully. Bankrupt Lee Hop & Co. W. C. Parke, assignee, in person. Ordered that the assignee's account be approved, he discharged, and his bond cancelled upon filing of creditors' receipts, for final divi-

Bankruptcy Quong Yuen Co. Neumann for the assignees. Ordered that the assignee's sale of property enumerated in their application of January 10th be confirmed.

Before Mr. Justice Preston. Bankruptcy of W. H. Graenhaigh. W. A. Whiting for the creditors. Claims amounting to \$4,867.52 are proved. W. C. Parke is elected as assignee under \$500 bond. The above amount does not include the claim of T. G. Thrum, who had already taken possession of the pro-

Before Mr. Justice Dole. John Parker and Samuel Parker vs. A. J. Cartwright and others. Bill in equity to cancel a lease. Hartwell and Neumann for plaintiffs; Brown and Smith for defendants. Answer day. The hearing was still on at adjournment for the day.



HAVING BEEN APPOINTED
Assignee of the Estate of C. AWANG, of
Lahaina, Bankrupt, I hereby request all persons
having claims against said estate to pre-
sent same at once to the Honorable Court and
all persons indebted to said estate will
make immediate payment to me at the office of
M. Phillips & Co., or to Thomas E. Evans,
Lahaina.
THERO F. LANSING.

Executors Notice:
THE UNDERSIGNED HAV-
 ing been duly appointed Executor of the
 Estate of MAI KEAW KAHANI, late of Hono-
 lulu, Oahu, deceased; Notice is hereby given
 to all persons to present their claims against
 the estate of the said Mai Keaw Kahani, de-
 ceased, duly authenticated and with proper
 vouchers, if they exist, whether secured by
 mortgage or otherwise, to the undersigned, at
 the law office of William C. Auld, No. 15, Ka-
 huanui Street, in Honolulu, within six months
 from the date hereof, or they will be forever
 barred.

FRANK PARRA, Executor.

Dated Honolulu, Jan. 8, 1889. 1251-46

COPARTNERSHIP NOTICE.

THE UNDERSIGNED HAVE THIS day entered into a copartnership for the purpose of carrying on the business of **SELLING AWA** at Lahaina, on the island of Maui, under the firm name of **Yee Hop & Co.** The business will be conducted by **Leong Hung Kee**, who will pay all bills and collect all debts due the firm.

Leong Hung Kee of Lahaina, Maui,
Kwong Chuan of Lahaina, Maui,
Sun Kee Look of Honolulu, Oahu,
Yeong Hong of Honolulu, Hawaii,
Lahaina, Maui, Jan. 1, 1889.

1889-2-1-15